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THIS BULLETIN IS HEREBY REVISED PURUANT TO SB731 of the 81st Legislative Session amending 19.01(5), 20.01(5) and 21.01(4) of the Alcoholic Beverage Code relate to the purchase of ale/malt liquor by private club permit holders, effective 09/01/09..

1st Amendment September 22, 2009
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MARKETING PRACTICES BULLETIN – MPB024
Sale of Alcoholic Beverages to Private Clubs

To: Alcohol Beverage Industry

It has come to our attention that Beer Distributors who also hold a Wholesaler's Permit and/or a General Class B Wholesaler's permit have engaged in a practice possibly since 1997 whereby under its wholesaler's permit have sold & delivered ale and/or malt liquor to holders of a private club permit (N), private club wine & beer permit (NB) and/or a private club exempt permit (NE) in wet/damp areas where the sale of beer is authorized. We were petitioned to provide a staff opinion on the legality of this practice.

In an effort to clarify purchases of alcoholic beverages by the holder of any of the aforementioned private club permits, we will broaden the scope of the initial inquiry to address all alcoholic beverages purchased by a holder of a private club permit:

Wine: Pursuant to 16 TAC 41.51 (c) Each holder of a private club registration permit and private club exemption certificate permit may purchase wine from only the holder of a local distributor's permit [LP]. Therefore it shall be unlawful for a private club permittee to purchase wine from any other source.

Distilled Spirits: Pursuant to Sect. 32.08 (a) of the Texas Alcoholic Beverage Code [Code] All distilled spirits sold by a club holding a private club registration permit must be purchased in this state from a holder of a local distributor's [LP] permit.

Beer: Pursuant to Sect. 64.01 (a)(2) of the Code, the holder of a general distributor's license may distribute or sell beer in the unbroken original packages in which it is received to private club registration permittees. Pursuant to Sect. 23.01 (a) (2) of the Code, the holder of a local distributor's [LP] permit may sell and distribute alcoholic beverages to private club registration permittees. Therefore, the holder of a private club permit may purchase its beer from either a Beer Distributor or Local Distributor [LP].

[NOTE: Beer is defined by statute as a malt beverage containing one-half of one percent or more of alcohol by volume and not more than four percent of alcohol by weight, and does not include a beverage designated by label or otherwise by a name other than beer.]

Ale/Malt Liquor: Effective September 1, 2009, SB731 enacted by the 81st Texas Legislature amends Sect. 19.01(5), 20.01(5) and 21.01(4) of the Texas Alcoholic Beverage Code allowing the holder of a private club registration permit to purchase ale/malt liquor products from the holder of a wholesaler's permit, general class B wholesaler's permit or local class B wholesaler's permit.



TABC

TEXAS ALCOHOLIC BEVERAGE COMMISSION

service ★ courtesy ★ integrity ★ accountability

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Pursuant to Sect. 19.01 (3) & Sect. 20.01 (3) of the Code, the holder of a Wholesaler's permit [irrespective of whether it simultaneously hold a general distributor's license], may sell ale/malt liquor in the original containers in which they are received to retailers authorized to sell the liquor [it is essential to note the emphasis on the word sell, although a private club is considered a retailer it is not authorized to sell liquor and instead is limited to providing service of liquor], therefore a wholesaler may not sell or deliver ale/malt liquor to private clubs. Thus the holder of a private club permit must purchase ale/malt liquor only from a local distributor [LP] permittee.

The Commission recognizes that there has been an imbalance of statute and industry practice in this matter and therefore it is our intention to restore industry compliance. However, We realize the economic and/or operational impact this may have on the affected industry. We will grant a grace period for compliance through June 30, 2009 to allow the industry to seek statutory remedy through the Legislature. During the grace period, private clubs will be allowed to purchase ale/malt liquor from either a wholesaler or local distributor [LP] permittee. Effective immediately thereafter, we will begin enforcing provisions relating to the purchase of ale/malt liquor by private clubs.

This opinion is of the staff of the Commission, and it should be noted that any permittee/licensee may pursue a different opinion through administrative proceedings with the State Office of Administrative Hearings. The commission will continue to monitor this issue and make necessary regulatory changes as statutorily applicable. We hope this opinion will assist you in your endeavors. If you would like additional information or have questions regarding this bulletin, you may contact me in writing at P.O. Box 13127, Austin, TX 78711, by email at marketing.practices@tabc.state.tx.us, by phone at 512-206-3411 or by facsimile at 512-206-3203.

Kind Regards,

A handwritten signature in blue ink that reads "Dexter K. Jones".

Dexter K. Jones
Director of Marketing Practices

CC: Alan Steen, Administrator
Executive Management
Regional Personnel